

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

ENTERED
Office of Proceedings
November 18, 2022
Part of
Public Record

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

November 18, 2022

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **Docket No. FD 36650**
3i RR Holdings GP LLC, et al. and Regional Rail, LLC – Control
Exemption – Effingham Railroad Company, Illinois Western
Railroad Company and South Point & Ohio Railroad, Inc.

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Motion for Protective Order of 3i RR Holdings GP LLC, 3i RR Holdings Partnership L.P., 3i RR Intermediate Holdings LLC, 3i RR LLC, Regional Rail Holdings, LLC, Regional Rail Sub Holdings LLC and Regional Rail, LLC**, dated November 18, 2022.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

Respectfully submitted,

/s/ *Thomas J. Litwiler*

Thomas J. Litwiler
Attorney for 3i RR Holdings GP LLC, et al.
and Regional Rail, LLC

TJL:tl

Attachment

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36650

3i RR HOLDINGS GP LLC, ET AL. AND REGIONAL RAIL, LLC
-- CONTROL EXEMPTION --
EFFINGHAM RAILROAD COMPANY,
ILLINOIS WESTERN RAILROAD COMPANY
AND SOUTH POINT & OHIO RAILROAD, INC.

**MOTION FOR PROTECTIVE ORDER OF
3i RR HOLDINGS GP LLC, 3i RR HOLDINGS PARTNERSHIP L.P.,
3i RR INTERMEDIATE HOLDINGS LLC, 3i RR LLC,
REGIONAL RAIL HOLDINGS, LLC, REGIONAL RAIL
SUB HOLDINGS LLC AND REGIONAL RAIL, LLC**

Thomas J. Litwiler
Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR
3i RR HOLDINGS GP LLC, ET AL.
AND REGIONAL RAIL, LLC**

Dated: November 18, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36650

3i RR HOLDINGS GP LLC, ET AL. AND REGIONAL RAIL, LLC
-- CONTROL EXEMPTION --
EFFINGHAM RAILROAD COMPANY,
ILLINOIS WESTERN RAILROAD COMPANY
AND SOUTH POINT & OHIO RAILROAD, INC.

**MOTION FOR PROTECTIVE ORDER OF
3i RR HOLDINGS GP LLC, 3i RR HOLDINGS PARTNERSHIP L.P.,
3i RR INTERMEDIATE HOLDINGS LLC, 3i RR LLC,
REGIONAL RAIL HOLDINGS, LLC, REGIONAL RAIL
SUB HOLDINGS LLC AND REGIONAL RAIL, LLC**

Pursuant to 49 C.F.R. § 1104.14(b), 3i RR Holdings GP LLC, 3i RR Holdings Partnership L.P., 3i RR Intermediate Holdings LLC, 3i RR LLC, Regional Rail Holdings, LLC and Regional Rail Sub Holdings LLC (collectively, “3i RR”) and Regional Rail, LLC (“Regional Rail”) hereby request that the Board issue a Protective Order allowing 3i RR and Regional Rail to file under seal a Stock Purchase Agreement dated as of November 10, 2022 among Regional Rail, Charles W. Barenfanger, Jr. and Agracel, Inc. (“Agracel”) providing for the sale of all outstanding stock of Effingham Railroad Company (“EFRR”) and Illinois Western Railroad Company (“ILW”), and a draft Stock Purchase Agreement to be executed by South Point & Ohio Railroad, Inc. (“SPOR”), SPOR, SPOR’s shareholders, Agracel as the sellers’ representative and Regional Rail providing for the sale of all outstanding stock of SPOR (collectively, “the Agreements”).

3i RR and Regional Rail have filed a notice of exemption under 49 C.F.R. § 1180.2(d)(2) to permit them to acquire control of EFRR, ILW and SPOR. The control notice of exemption includes redacted copies of the Agreements as Exhibits 2A and 2B. 3i RR and Regional

Rail have concurrently filed highly confidential un-redacted copies of the Agreements under seal subject to this request for a Protective Order.

The redacted information contained in the Agreements is proprietary and commercially sensitive. The proposed protective order will allow 3i RR and Regional Rail to file the unredacted Agreements under seal with the Board, and, upon appropriate request, to make those documents available to outside counsel for interested parties, subject to execution of an appropriate undertaking. The proposed protective order is consistent with other protective orders previously issued by the Board.

Accordingly, 3i RR and Regional Rail, pursuant to 49 C.F.R. § 1104.14(b), hereby request that the Board to enter a protective order (in the form set forth in the appendix hereto) in this proceeding, including the forms of confidentiality undertakings that are appended to it.

Respectfully submitted,

/s/ *Thomas J. Litwiler*

By: _____

Thomas J. Litwiler

Thomas J. Healey

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

**ATTORNEYS FOR
3i RR HOLDINGS GP LLC, ET AL.
AND REGIONAL RAIL, LLC**

Dated: November 18, 2022

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order:
 - (a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.
 - (b) “Confidential Information” means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other databases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers or carriers, confidential financial and cost data, purchase and sale agreements, and other confidential or proprietary business or personal information.
 - (c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with Paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such materials.
 - (d) “Proceedings” means those before the Surface Transportation Board (“Board”) concerning the notice of exemption filed in FD 36650 and any related proceedings before the Board, and any judicial review proceedings arising from these proceedings or from any related proceedings before the Board.
2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as “CONFIDENTIAL.” Any information or documents designated or stamped as “CONFIDENTIAL” shall be handled as provided for hereinafter.
3. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains shipper-specific rate or cost data, details from purchase and sales agreements, other transactional agreements or records, or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as “HIGHLY CONFIDENTIAL” Any information or documents so designated or stamped shall be handled as provided hereinafter.
4. Information and documents designated or stamped as “CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or

documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

5. Information and documents designated or stamped as “HIGHLY CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Order.
6. Any party to these Proceedings may challenge the designation by any other party of information or documents as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL” by filing a motion with the Board.
7. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in the notice of exemption filed in FD 36650 and any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with FD 36650 and/or with any related proceedings.
8. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings including any petitions for reconsideration, appeals, or remands.
9. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as “Confidential Materials Subject to Protective Order.” See 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board.
10. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, “Confidential Materials Subject to Request for Protective Order,” and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

11. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, and has accompanied such submission with a written request that the Board (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.
12. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in Paragraph 9 of this Protective Order.
13. To the extent that materials reflecting Confidential Information are produced by a party to these Proceedings, and are held and/or used by the receiving person in compliance with Paragraphs 1, 2 or 3 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of these and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904 or of any other relevant provision of the ICC Termination Act of 1995.
14. Any party that files with the Board a document containing Confidential Information must simultaneously file with the Board a public version of that document.
15. All parties must comply with all of the provisions of this Protective Order unless the Board determines that good cause has been shown warranting suspension of any of the provisions herein.
16. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

EXHIBIT A
UNDERTAKING-CONFIDENTIAL
MATERIAL

I, _____, have read the Protective Order served on December ____, 2022 governing the production and use of Confidential Information and Confidential Documents in FD 36650, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in FD 36650, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with FD 36650 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of these proceedings (including any proceeding or administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be sufficient remedy for breach of this Undertaking and that parties producing confidential information or confidential documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

EXHIBIT B
UNDERTAKING-HIGHLY CONFIDENTIAL
MATERIAL

I, _____, am outside [counsel] [consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on December ___, 2022, governing the production and use of Confidential Information and Confidential Documents in FD 36650, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in FD 36650 and/or any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with FD 36650 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as “HIGHLY CONFIDENTIAL” that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees or my client or its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as “HIGHLY CONFIDENTIAL” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this undertaking and that other parties producing confidential information or confidential documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____